

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

SYLVIA ESPINOSA, as next of friend  
of PATRICIA ESPINOSA, a minor,

Plaintiffs,

vs.

Civ. No. 00-1641 M/WWD

THE ESTATE OF ALFRED FLORES and  
ALBUQUERQUE PUBLIC SCHOOLS,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Plaintiffs' Motion to Compel Discovery From Defendant Estate of Alfred Flores ("Motion No. 1") filed July 18, 2001 [docket no. 67], and Plaintiffs' Motion to Compel Discovery ("Motion No. 2") filed August 6, 2001 [docket no. 74]. On April 16, 2001, Defendants filed a Motion to Dismiss which was denied by the Court on July 5, 2001. The denial of the motion has been appealed. In reviewing the motion and the order denying the motion, there may be a question as to whether the question of qualified immunity was properly raised; however, it certainly has not been raised in any other motion to dismiss; and the reason for limiting discovery as set forth in my order entered April 18, 2001, has ceased to exist. The trial judge has ruled on the motion to dismiss to whatever extent it may have addressed the question of qualified immunity, and it would not be a proper exercise of my discretion to continue the stay previously entered in this cause in light of that ruling.

**Motion No. 1**

Motion No. 1 seeks responses to “interrogatories and requests for production of documents to Defendant Estate of Alfred Flores.” Defendant’s response to this discovery request is as follows:

Defendant hereby objects to Plaintiffs’ Interrogatories and Request for Production of Documents to Defendant Estate of Alfred Flores. As ground therefore, Defendant states that on April 16, 2001 Defendants filed a Motion for Protective Order and to Stay Discovery in this matter. The matter has been fully briefed, and is currently awaiting a decision by the Court.

I find that the aforementioned response no longer applies in light of the denial of Defendant’s Motion to Dismiss.

**Motion No. 2**

Motion No. 2 seeks to compel Defendant Albuquerque Public Schools to produce certain documents sought by Plaintiff at the deposition of Gena Jones, director of the human resources department of Albuquerque Public Schools (“APS”). Defendant APS contends that Plaintiff’s counsel failed to comply with Fed. R. Civ. P. 30 and 45 in that no subpoena duces tecum was served on the person to be examined and that only a notice of deposition duces tecum was served on counsel of record. Defendant APS further contends that Plaintiff failed to adhere to the time constraints of Fed. R. Civ. P. 34. Lastly, Defendant APS contends that Motion No. 2 should be denied until the question of qualified immunity is determined by the Court of Appeals for the Tenth Circuit. Defendant’s arguments with respect to compliance with Fed. R. Civ. P. 30, 45, and 34 are well taken. Accordingly, Motion No. 2 should be DENIED.

**WHEREFORE,**

**IT IS ORDERED** that on or before August 23, 2001, Defendants shall answer fully and completely interrogatories 1-7, and Defendant shall serve upon Plaintiff the materials sought in requests for production 1-12.

**IT IS FURTHER ORDERED** that Plaintiff's Motion to Compel Discovery [docket no. 74] be, and it is hereby, **DENIED**.

  
UNITED STATES MAGISTRATE JUDGE